

REMARKS

This Amendment is responsive to the Office Action dated June 28, 2005. Applicant appreciates the Examiner's efforts in conducting a timely and comprehensive examination of the application. Responsive to the Office Action, Applicant has amended the application to a scope that is commensurate with the issues raised by the Examiner.

Claims 1 – 4 and 8 were rejected under 35 U.S.C. 102(b) as being anticipated by Blachly (4,270,531). Claims 5 – 7 were rejected under 35 U.S.C. 103(a) as being unpatentable over Blachly in view of Kuo (6,607,382).

Claims 1, 4, and 6 were amended. Claims 1 – 8 remain pending. No new matter has been added. Reconsideration is respectfully requested.

The claims have been amended to more clearly recite the perpendicular orientation of the concave tongue receiving surface relative to the elongate shaft. More particularly, Applicant has disclosed a breathing normalizer having a concave surface disposed generally vertically when in the mouth.

U.S. Patent No. 4,270,531, issued to Blachly, discloses an oropharyngeal airway tube and bite block assembly wherein an elongate shaft 10 defines a generally horizontally disposed concave portion, referenced as 16. Accordingly, the structure disclosed by Blachly is completely different than that disclosed and claimed by Applicant.

The Examiner cites Kuo for teaching an apparatus for placement within the mouth comprising a polymer that can change colors (Col. 7, lines 39 – 42) and being flavored (Col. 4, lines 60 – 63).

As to change of color, Kuo merely teaches color change in response to the device being either in the oral environment (body temperature) or removed (room temperature). In contrast, Applicant has specified that the presently claimed apparatus may be fabricated from a material that reacts to temperature by changing color such that Applicant's apparatus "may indicate to attending medical personnel whether the user's temperature is normal or elevated by color." See, Page 6, lines 11 – 15. Accordingly, Applicant's color changing feature contemplates color change from a normal body temperature (98.6 degrees) to an elevated body temperature above normal body temperature. Applicant has amended claim 6 to more clearly claim this feature.

As to the Kuo's teaching of flavoring, Applicant notes that Kuo teaches the use of the appliance to deliver a "breath freshener to the oral environment". Col. 4, lines 59 – 62. Kuo contemplates that such breath fresheners may be "releasably attached" to the appliance. Col. 4, lines 64 – 66. In other embodiments Kuo contemplates agents such as gel, jelly, or putty (Col. 5, lines 45 – 48), encapsulation or suspension of an agent (Col. 6, lines 5 – 17), controlled release materials (Col. 6, lines 18 – 42). Applicant, on the other hand, discloses and claims a polymer that itself is flavored. See, Page 6, lines 9 – 11. Accordingly, Applicant does not require the addition of breath freshener to the apparatus as taught by Kuo.

In view of the above, Applicant believes that the claims are distinguishable from the teachings of the cited art. Accordingly, the claims are considered in immediate condition for allowance.

This Amendment is considered timely and fully responsive to the issues raised by the Examiner.

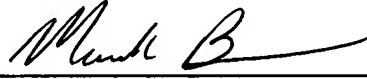
Should the Examiner have any questions, comments, or concerns, the undersigned would appreciate a telephone conference in order to expedite this case.

Respectfully submitted,

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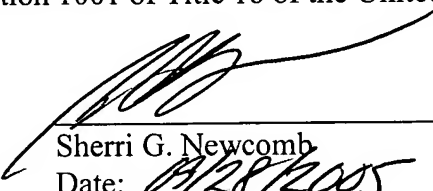
APPLICANT : Alexander Pivovarov
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CERTIFICATE OF MAILING

I HEREBY CERTIFY that the following correspondence: *AMENDMENT IN RESPONSE TO OFFICE ACTION DATED JUNE 28, 2005; and RETURN POSTCARD FOR CONFIRMATION OF RECEIPT* is being deposited with the United States Postal Service as first class mail with sufficient postage in a prepaid envelope addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 28th day of September, 2005.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.



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Date: 09/28/2005

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